

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

608941 NJ INC.,

Plaintiff,

-against-

JEFFREY SIMPSON, JJ ARCH LLC, and
ARCH REAL ESTATE HOLDINGS LLC,

Defendant.

Civil Action No.: 1:23-cv-08966

PROPOSED EMERGENCY
ORDER TO SHOW CAUSE FOR
REMAND AND, IN THE
ALTERNATIVE, FOR
PRELIMINARY INJUNCTION
AND TEMPORARY
RESTRAINING ORDER

Upon the declaration of Leslie C. Thorne, Esq., and exhibits attached thereto, and the accompanying memorandum in support of emergency order to show cause for remand of action and, in the alternative, for preliminary injunction and temporary restraining order, each dated October 13, 2023, it is hereby:

ORDERED, that the above-named Defendants show cause before a motion term of this Court, at _____, United States Courthouse, 500 Pearl Street, in the City, County and State of New York, on _____ at _____ o'clock in the am/pm thereof, why an order should not be issued remanding this matter back to the court from which it was removed pursuant to 28 U.S.C. §1447(c), on in the alternative, granting Plaintiffs' request for preliminary injunction and temporary restraining order (1) enjoining Defendants during the pendency of this action from filing, acquiescing to, consenting to or taking of any "Bankruptcy Action," as that term is defined in the Limited Liability Company Operating Agreement of Arch Real Estate Holdings LLC (the "AREH LLC Agreement") and (2) granting immediate access to

Plaintiff within five (5) days of service of this Order the books and records of AREH and the Applicable Entities described in Plaintiff's September 18, 2023 letter (the "Demand Letter") from January 1, 2020 to the present. Specifically:

- i. An alphabetical list of the name and mailing address of each current member and manager of each Applicable Entity, including each member's contribution (capital contributions or otherwise) to such Applicable Entity and share of the profits and losses.
- ii. Each Applicable Entity's articles of organization or similar organizational document, all its amendments and restatements, and any powers of attorney used to execute those documents.
- iii. Each Applicable Entity's operating agreement and its amendments and restatements.
- iv. Each Applicable Entity's federal, state, and local income tax or information returns and reports for the three most recent fiscal years.
- v. Any financial statements maintained by any Applicable Entity for the three most recent fiscal years.
- vi. Complete and accurate books and records supporting the documentation of any expenditures from each Applicable Entity's bank accounts.
- vii. Complete and accurate information regarding the state of the business and financial condition of each Applicable Entity's – including, but not limited to:
 1. Bank records;
 2. QuickBooks, or other accounting system files;

3. Check registers; and

4. Evidence of payment and support of expenses.

viii. The financial reporting required under AREH LLC Agreement Section 11.5 and Exhibit E thereto.

And it is further ORDERED that, sufficient reason having been shown therefor, pending the hearing on plaintiff's order to show cause, the relief check-marked below is granted:

- ☐ Pursuant to 28 U.S.C. §1447(c), this matter is remanded back to the court from which it was removed.
- ☐ Pursuant to 28 U.S.C. §1441(c), Plaintiff's causes of action for books and record inspection and equitable accounting are severed and remanded to the court from which they were removed and pursuant to Rule 65 of the Federal Rules of Civil Procedure Defendants are enjoined during the pendency of this action from filing, acquiescing to, consenting to or taking of any "Bankruptcy Action," as that term is defined in the Limited Liability Company Operating Agreement of Arch Real Estate Holdings LLC (the "AREH LLC Agreement").
- ☐ Pursuant to Rule 65 of the Federal Rules of Civil Procedure, Defendants are enjoined during the pendency of this action from filing, acquiescing to, consenting to or taking of any "Bankruptcy Action," as that term is defined in the Limited Liability Company Operating Agreement of Arch Real Estate Holdings LLC (the "AREH LLC Agreement") and granting immediate access to Plaintiff within five (5) days of service of this Order the books and records of AREH and the Applicable Entities described in Plaintiff's September 18, 2023 letter (the "Demand Letter") from January 1, 2020 to the present. Specifically:

- i. An alphabetical list of the name and mailing address of each current member and manager of each Applicable Entity, including each member's contribution (capital contributions or otherwise) to such Applicable Entity and share of the profits and losses.
- ii. Each Applicable Entity's articles of organization or similar organizational document, all its amendments and restatements, and any powers of attorney used to execute those documents.
- iii. Each Applicable Entity's operating agreement and its amendments and restatements.
- iv. Each Applicable Entity's federal, state, and local income tax or information returns and reports for the three most recent fiscal years.
- v. Any financial statements maintained by any Applicable Entity for the three most recent fiscal years.
- vi. Complete and accurate books and records supporting the documentation of any expenditures from each Applicable Entity's bank accounts.
- vii. Complete and accurate information regarding the state of the business and financial condition of each Applicable Entity's – including, but not limited to:
 1. Bank records;
 2. QuickBooks, or other accounting system files;
 3. Check registers; and
 4. Evidence of payment and support of expenses.
- viii. The financial reporting required under AREH LLC Agreement Section 11.5

and Exhibit E thereto.

ORDERED that Plaintiff shall be awarded just costs and any actual expenses, including attorney fees, incurred as a result of wrongful removal pursuant to 28 U.S.C. §1447(c).

ORDERED that personal service of a copy of this order and annexed affidavits upon the defendant or its counsel on or before _____, _____ at o'clock in the a.m/p.m shall be deemed good and sufficient service thereof.

Dated: October 13, 2023
 New York, New York

ISSUED: _____

United States District Judge